Federated Malay States Railways- If continuity of employment be the true test in cases like this, as Mr. Das suggests that it is, then the appellant's thirteen years of continuous employment surely fulfils that condition. Section 5 of the Public Servants (Liabilities) Regulation, 1893, provides as follows:—

> "For the purposes of this Regulation persons employed in any of the Federal Establishments of the Federated Malay States shall be deemed to be during the period of such employment employed in the service of the Government of the State."

The only difference that I can see between people like the appellant, and other more fortunate "persons employed in any of the Federal Establishments of the Federated Malay States," is that the former are not paid for the days on which they do no work whilst the latter are. But why that difference should be regarded as a good reason for denying to the former the protection admittedly conferred upon the latter by this Regulation of 1893 I am at a loss to understand.

The reports of the two cases decided in 1914 and 1916 respectively, to which I have already made reference, certainly do not help me to understand the *ratio decidendi* on which they are based. In the first of them, *Cornelius* v. *Wadhawa Singh*, 2 F.M.S.L.R. 203 a black-smith in the service of the Federated Malay States Railways was held not to be a public servant within the meaning of the Regulation, no reasons being given for that decision; and in the second of them, *Wadhawa Singh* v. *Ismail Khan*, 2 F.M.S.L.R. 203 a fitter in the service of the Federated Malay States Railways was also held not to be such a servant on the authority of the first of them, and for no other recorded reason. As both the black-smith and the fitter were paid on the basis of a daily wage, it may well be that that fact provided the ground upon which these two cases were decided. If that be so, then I have already made it clear that the fact would not have weighed with me. With the utmost respect for the learned Judges who decided those cases, I cannot help thinking that they were wrongly decided.

But that does not mean that I shall not follow them. It seems to me that I am bound to apply the principle enunciated by Thesiger, L.J. in *Pugh* v. *Golden Valley Railway*, 15 Ch. D. 330, 334 in the following words:—

> "Viewed simply as the decision of a Court of first instance, the authority of this case —*Reg.* v. *Wycombe*, 2 Q.B. 310 notwithstanding the respect due to the Judges who decided it, is not binding upon us; but viewed in its character and practical results, it is one of a class of decisions which acquire a weight and effect beyond that which attaches to the relative position of the Court from which they proceed. It constitutes an authority which, after it has stood for so long a period unchallenged, should not, in the interests of public convenience, and having regard to the protection of private rights, be overruled by this Court except upon very special considerations. For twelve years and upwards that case has continued unshaken by any judicial decision or criticism as an authoritative exposition of the meaning of section 16 of the Railways Clauses Consolidation Act, 1845, in respect of the matter here in dispute."

For twenty years and upwards these two cases of *Cornelius* v. *Wadhawa Singh* (*supra*) and *Wadhawa Singh* v. *Ismail Khan* (*supra*) have been regarded as authoritative decisions on the meaning of the expression "public servant" as used in the Public Servants (Liabilities) Regulation, 1893. Not only have they been so regarded, but also, as Mr. Mahendram admitted, much money has been lent to the humbler employees of the Federated Malay States Railways in the belief that the law was definitely settled by them. That is the main consideration which weighs with me, because it is of such importance that the law should remain settled, so far as possible, and that the private rights which have grown up under its protection should not be lightly disturbed. For these reasons I conceive it to be my duty to follow *Cornelius* v. *Wadhawa Singh* (*supra*) and *Wadhawa Singh* v. *Ismail Khan* (*supra*) though I do not approve of them, and this appeal must therefore be dismissed with costs.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]
DE BURIATTE, J.
November 28, 1936.

CHAN TING CHOO.....Appellant

v.

PUBLIC PROSECUTOR.....Respondent.

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 15 of 1936.]

The Opium and Chandu Enactment (*Cap. 134*), *rule 4* (*iv*) *of the Rules for Registration of Chandu Smokers—Construction of rule 4* (*iv*).

The words "retain possession" in rule 4 (iv) of the Rules for Registration of Chandu Smokers made under the Opium and Chandu Enactment (Cap. 134) have the same meaning as the words "have possession" and mere possession of any other person's registration card, except for the purposes specified in rule 8, is an offence.

M. Farr for the appellant.

C. H. Whitton, Deputy Public Prosecutor, for the respondent.

Cur. Ad. Vult.

DE BURIATTE, J.—In this case the accused was charged with being in possession of another person's registration card other than for

purposes of rule 8 of the Opium and Chandu Rules an offence under rule 4 (iv) of the Opium and Chandu Rules.

The accused was arrested coming out of a Government Chandu Shop and was alleged by the prosecution to have then had in his possession tubes of chandu which he threw away on arrest. Accused is himself a registered smoker and the prosecution failed to call the clerk in the Chandu Shop to prove whether or not the accused had used the registration card belonging to his cousin Teh Tiow Koon whose registration card accused had on his person at the time of his arrest. The inference to be drawn under section 114 of the Evidence Enactment is therefore that the accused did not avail himself of Teh Tiow Koon's registration card to purchase chandu under it and therefore that potential ingredient of the offence was not proved by the prosecution. The learned Magistrate however found the accused guilty on the ground that rule 4 (iv) of the Opium and Chandu Rules means that no person shall retain possession of another person's registration card in any circumstances whatsoever unless he is a nominee purchaser, and he imposed a nominal fine of $15/-.

Against this decision the accused appealed, and the question for decision is whether under a correct reading of rule 4 (iv) it is an offence for any person to retain in his possession another person's registration card for any purpose whatsoever however innocent except for use as a nominee purchaser. It was submitted by counsel for the appellant that if such were the case a registered smoker would be committing an offence in handing his card to his counsel for the purpose of defending legal proceedings and that counsel also would be committing an offence in respect thereof. It was submitted by the prosecution that section 105 of the Evidence Enactment applies to the rule in question, and that the onus of proving the existence of any circumstances bringing the accused within the exception is upon the accused and that the Court must presume the absence of such circumstances. In my view this contention is correct and in the case in point the onus lay upon the accused to prove that he was retaining possession of Teh Tiow Koon's registration card for purposes of purchase as a nominee purchaser. He failed to prove this and in my opinion the learned Magistrate was correct in convicting him.

Inspection of Teh Tiow Koon's card disclosed that it was not indorsed for use by a nominee purchaser.

At the same time as the prosecution did not prove that the accused retained the card for the purpose of using it in direct contravention of rule 8 the offence must be considered a nominal one only as criminality in this respect cannot be presumed. In my view the absence of any indorsement on the registration card as to a nominee purchaser having been appointed does not constitute conclusive evidence on the point. Better and more direct evidence as to this is available to the prosecution namely the office records of the Government Monopolies and proof of the absence from the official register of any appointment of an accused person as a nominee purchaser. Such being the case the accused must be held to have retained the card for a purpose innocent of an offence in respect of rule 8 but none the less such purpose constitutes an offence against rule 4 (iv) and this view is borne out by rule 4 (iii) which makes it an offence for any registered smoker to deliver his card to any person except for the purpose of rule 8.

As to counsel's contention that a registered smoker renders himself liable to prosecution for an offence if he hands his card to any other person for any purpose whatsoever however innocent other than for the purposes of rule 8 the answer is that it must be left to the discretion and good sense of the Government officials administering the Chandu Laws not to take proceedings in cases which are obviously of a technical nature. It was argued by counsel for the appellant that as the word "retain" is used in rule 4 (iv) that the rule cannot have the same meaning as if the word "have" had been used and that proof of mere possession at any given time is not sufficient to bring a person within the purview of the rule but that something further must be proved by the prosecution namely that the registration card was kept in that person's possession for some length of time. What length of time was not argued to the Court but presumably a sufficient length of time to constitute a state of "retention" as distinguished from mere "possession." In my view this argument cannot hold. Rule 4 (iv) put into its positive form would provide that it would be lawful for any person to retain possession of another person's registration card for the purposes of purchasing as a nominee purchaser but not for any other purpose and it is obvious that the employment of the word "retain" would be grammatically correct by reason of the fact that the purpose might be a continuing one. Put into its negative form as it now appears, in my view the words "retain possession" in rule 4 (iv) have the same meaning as the words "have possession."

For these reasons the conviction and fine must stand. *Appeal dismissed.*